

RICHARD CHENERY.

[To accompany Bill S. No. 77.]

APRIL 13, 1860.

Mr. W. N. H. SMITH, from the Committee on Commerce, made the following

REPORT.

The Committee on Commerce, to whom was referred the petition of Richard Chenery, praying payment for the construction of certain pavement in front of the custom-house at San Francisco, together with the resolution of the Senate for his relief, have had the same under consideration, and report :

The facts upon which the petitioner rests his application are as follows :

The petitioner is assignee of Horace P. Russ, and asks to be paid one-half of the cost of putting down a granite pavement on Battery street, which passes between the custom-house lot, belonging to the United States, and the lot known as the Merchants' Exchange, which is private property.

By an act of the legislature of California, the owners of lots in the city of San Francisco are required to keep one-half of the public street in front of their property in good repair. It is shown that Battery street was greatly out of repair, and being in constant use, the proprietors of the Exchange proposed to the collector to enter into a contract with Horace P. Russ to put down a stone pavement in the street as far as the lines of the opposite lots were concurrent, at the joint expense of themselves and the United States. This proposal was declined for the want of authority in the collector to make any such arrangement.

The proprietors of the Exchange thereupon engaged Mr. Russ to do the work, the width of the whole street to the boundaries of their lot, they paying him one-half, and he agreeing to look to the United States for payment of the other half of the expense.

It appears from a report made November 5, 1856, by Major Toner, who superintended the expenditure of the appropriation for street improvement about the custom-house, that what is called the Russ pavement, consisting of cubical granite blocks laid upon a substantial bed, had been constructed across the street the length of the front of the Exchange, and he suggests the payment of some sum in compromise

of the claim, at least as far as the government property had been benefited by the improvement.

The residue of the street was covered with the cobble stone pavement, and this kind would have been put in place of the more expensive, though more durable Russ pavement, for which compensation is asked.

The former Secretary of the Treasury declined making any allowance for the work, for the reason which he assigns in a letter to Major Toner, of December 1, 1856, that "the service was voluntary, and the work itself of doubtful value."

Repeated applications have been since addressed to the present Secretary for an examination of the claim, which he refuses to entertain, upon the ground of a prior adjudication and a rule of the department not to review the decisions of his predecessor.

In response to a communication from the committee to him, asking for information as to the claim, the Secretary expresses a doubt of the "propriety of remunerating parties for doing work not authorized by any competent authority," and suggests, if any allowance is made, that "it should be limited to the cost of laying 'the common cobble stone pavement,' such as the government has placed upon the residue of the street in front of the custom-house lot."

With the letter from the Secretary he transmits from the Office of Construction, to which the matter was referred by him, a report, in which it is stated that a cobble pavement would have answered as good a purpose as the more expensive Russ pavement, but that the work had been well done, and recommending that compensation should be allowed not exceeding the cost of laying the cobble stone pavement.

From the evidence before the committee it appears that Battery street was in a bad condition, and that when the work was done it was of great benefit to both the government and the public. The committee are fully sensible of the inconveniences that would arise from permitting unauthorized persons at their pleasure to work for the government and demand remuneration for their labor, yet the facts of the present case may well make it, in the opinion of the committee, an exceptional one.

The work was not officious, but the sanction of the local government officers was first sought and refused for want of authority; its propriety met their individual approval, and was done under their eye. It was urgently required at the time, and proved of great convenience in the use of the custom-house. It was executed under a contract possessing all the guarantees against imposition and extortion which an equal private interest could supply. The government would have paved the same surface as was paved by the petitioner's assignor, and secures by his work at once all exemption from the common obligation imposed upon private property-holders in the city to maintain one-half the street in front in repair, and is reaping the full benefits of the labor and materials furnished by another.

The committee do not think the government should, under the circumstances, enjoy the benefits of this work and their exemption from an outlay necessary but for this, without making any remuneration. Still it would be an injurious precedent to allow more than the actual

cost of the work which, but for this pavement, the government would have had to incur in putting down a less expensive pavement like that upon the rest of the street.

To effect these ends, the committee report back the resolution, and, with the accompanying amendment, recommend its passage.

